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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,231	01/04/2005	Andre Johan Taljaard	930092-2008	5104
7590 Ronald R Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151				
01/11/2010				
EXAMINER				
MAL HAO D				
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
01/11/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,231

Applicant(s)

TALJAARD, ANDRE JOHAN

Examiner

HAO D. MAI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,11-14,18,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,11-14,18,22 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-2, 5-7, 11-14, 18, and 22-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Karasic (6,805,127) in view of Bertoch et al. (6,755,191).**

Regarding claim 1, Karasic discloses a device capable of retaining a medical tube, the device including: a first patient engaging portion (first mouthguard 14) configured to engage a zone of an upper jaw of a patient; and a second patient engaging portion (second mouthguard 24) configured to engage a zone of a lower jaw of the patient (Fig. 1). Both the first and second engaging portions 14, 24, each is being shaped in a form of a dental arch and having tooth engaging portions; and the two portions are being biased apart to provide a working gap between. The device further includes a medical tube guide means, e.g. the tongue retractor holder 62 or throat opener channel/holder 42, either of which is capable of holding a medical tube and is located in an airway of the patient. The medical tube guide means 62 or 42 is supportable on patient engaging portion 24 and located relative to the patient engaging portions such that in use the medical tube guide means is operatively positioned at the mouth of a patient in order to hold the medical tube as it exits the airway of the patient. As to the newly made amendment(s), note that there is at least one bite block, e.g. structure 34/36 or 40,

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extending from at least one of the patient engaging portion capable of preventing a patient exerting a compressive force on the medical tube.

Karasic discloses the invention substantially as claimed except for the securing means. Bertoch et al. disclose a clamp 20 (Figs. 1-3) operable between a securing and a releasing position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Karasic by including a clamp such as that of Bertoch et al. in order to secure the medical tube against longitudinal displacement.

As to claim 2, Karasic discloses the mouthguards 14, 24 being made from elastomeric material, which are inherently resiliently deformable. **As to claims 5-7**, at least the medical tube guide means 42 is eccentrically located towards a commissure of the mouth and is sized to permit a view into the mouth of the patient through the working gap; it is also capable of immobilize the medical tube in a desired position. **As to claim 11**, Karasic discloses various embodiments for the fastener 12 which bias apart the first and second patient engaging portions; at least one of the fasteners shown in Fig. 4 is spring-loaded. **As to claims 12 and 14**, the medical tube guide means 62 or 42 each includes a eye through which the medical tube to be guided can pass; and the first and second patient engaging portions includes portions configured to approximate a patient's bite size.

As to claim 13, Karasic does not disclose a slip resilient portion in the medical tube guide means. Bertoch et al. disclose that the inner surfaces of clamp 20 may be lined with a material having a high coefficient of friction such as rubber, or be formed with protuberances, ridges, grooves, etc. to improve the grip on a medical tube (column 4 lines 25-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Karasic by incorporate a slip resilient portion, such as lining the inner surface of the

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medical tube guide means 62 with a material having a high coefficient of friction in order to prevent slippage movement of the medical tube as explicitly taught by Bertoch et al.

Regarding claim 18, the method comprising the step of biasing a patient's teeth away from the medical tube while permitting the medical tube to be guided into the patient is naturally carried out when using the device disclosed by Karasic and Bertoch et al. as detailed above.

Regarding claims 22-23, Karasic discloses all the limitations as claimed as detailed above with respect to claims 1 and 5. Particularly, the first and second patient engaging portions 14, 24, each comprises a resiliently deformable arm 34, 36, respectively. Each arm has a base (area near 12) attached at one end, and a tooth engaging portion attached at the other end.

Response to Arguments

3. Applicant's arguments filed 10/13/2009 have been fully considered but they are not persuasive. It is noted that Applicant has relied extensively on functional claim language or intended use (i.e. for holding a medical tube..., in order to hold the medical tube..., for preventing a patient exerting a compressive force on the medical tube..., etc.) in the claims and the arguments. Such recitations of functions or intended uses of the claimed invention do not provide structural limitations, but only functional limitations. If the prior art structure is capable of performing the recited functions or intended use, then it meets the claim. *Ex parte Masham, 2 USPQ2d 1647 (1987)*. In this case, the examiner maintains that Karasic's medical tube guide means 62 or 42 each is clearly capable of "holding a medical tube located in an airway of the patient" and "is operatively positioned at the mouth of a patient in order to hold the medical tube as it exits the airway of the patient". Furthermore, Karasic's structure 40 (Fig. 1) reads on the claimed limitation "bite block" since it is in between the upper and lower jaws and it is capable of preventing a patient exerting a compressive force on the medical tube.

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Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAO D. MAI whose telephone number is (571)270-3002. The examiner can normally be reached on Monday-Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

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would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hao D Mai/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732